

1 ROB BONTA, State Bar No. 202668  
2 Attorney General of California  
3 MYUNG J. PARK, State Bar No. 210866  
Supervising Deputy Attorney General  
4 NATALIE E. COLLINS, State Bar No. 338348  
MICHAEL S. DORSI, State Bar No. 281865  
5 KATHERINE GAUMOND, State Bar No. 349453  
MICAELA M. HARMS, State Bar No. 329552  
6 DYLAN K. JOHNSON, State Bar No. 280858  
M. ELAINE MECKENSTOCK, State Bar No. 268861  
Deputy Attorneys General  
1515 Clay Street, 20th Floor  
7 Oakland, CA 94612-0550  
Telephone: (510) 879-0299  
8 Fax: (510) 622-2270  
E-mail: Elaine.Meckenstock@doj.ca.gov  
9 *Attorneys for Defendants*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12  
13

14 **ASSOCIATION OF AMERICAN  
15 RAILROADS and AMERICAN SHORT  
16 LINE AND REGIONAL RAILROAD  
ASSOCIATION,**

17 Plaintiffs,

18 v.

19 **LIANE M. RANDOLPH, in her official  
20 capacity as Chair of the California Air  
Resources Board; STEVEN S. CLIFF, in  
21 his official capacity as Executive  
Officer of the California Air Resources  
Board; and ROB BONTA, in his official  
22 capacity as Attorney General of the  
State of California,**

23 Defendants

2:23-cv-1154 DJC JDP

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANTS' CROSS-  
MOTION FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE, MOTION  
FOR A STAY OR DISMISSAL UNDER  
THE PRIMARY JURISDICTION  
DOCTRINE, AND DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

Date: April 25, 2024  
Time: 1:30 PM  
Courtroom: 10 (13th Floor)  
Judge: Hon. Daniel J. Calabretta  
Trial Date: Not Set  
Action Filed: June 16, 2023

1 Pursuant to Rule 201 of the Federal Rules of Civil Evidence, Defendants  
2 respectfully request the Court take judicial notice of the following facts and documents.

3 **I. DOCUMENTS ON GOVERNMENT WEBSITES TO BE JUDICIALLY NOTICED**

4 1. Excerpts from the Memorandum of Understandings and Agreements between  
5 the California Air Resources Board and the Burlington Northern Santa Fe and Union  
6 Pacific Railroads, dated 1998 (1998 MOU), a true and correct copy of which is attached  
7 to the Declaration of Michael S. Dorsi as Exhibit 1. The entire document is publicly  
8 available at <https://ww2.arb.ca.gov/sites/default/files/2021-02/1998MOU.pdf> and was  
9 downloaded from that URL on March 3, 2024.

10 2. ARB/Railroad Statewide Agreement: Particulate Emissions Reduction  
11 Program at California Rail Yards, dated 2005 (2005 MOU), a true and correct copy of  
12 which is attached to the Declaration of Michael S. Dorsi as Exhibit 2. Exhibit 2 is publicly  
13 available at <https://ww2.arb.ca.gov/sites/default/files/2020-06/2005%20MOU%20Remediated%2003102020.pdf> and was downloaded from that  
14 URL on February 28, 2024.

16 3. Comments of the Association of American Railroads to the United States  
17 Environmental Protection Agency in response to EPA's notice of proposed rulemaking  
18 on emissions standards for locomotive and marine engines, dated July 2, 2007, a true  
19 and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 3.  
20 Exhibit 3 is publicly available at [https://downloads.regulations.gov/EPA-HQ-OAR-2003-0190-0566/attachment\\_1.pdf](https://downloads.regulations.gov/EPA-HQ-OAR-2003-0190-0566/attachment_1.pdf) and was downloaded from that URL on March 1, 2024.

22 4. Excerpts from the Petition for a Brake System Safety Standards Rulemaking,  
23 submitted by the Association of American Railroads to the Federal Railroad  
24 Administration and dated July 12, 2018, a true and correct copy of which is attached to  
25 the Declaration of Michael S. Dorsi as Exhibit 4. Exhibit 4 is publicly available at  
26 <https://www.regulations.gov/document/FRA-2018-0093-0002> and was downloaded from  
27 that URL on February 26, 2024.

1       5. Update of Mineral Land Classification for Portland Cement Concrete-Grade  
2 Aggregate in the Palm Springs Production-Consumption Region, Riverside County,  
3 California, by the California Geological Survey, Department of Conservation, dated 2007,  
4 a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as  
5 Exhibit 9. Exhibit 9 is publicly available at  
6 [https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR\\_198-MLC-Report.pdf](https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR_198-MLC-Report.pdf) and was downloaded from that URL on March 2, 2024.

8       6. The webpage “Learn About Idling Reduction for Locomotives” on the  
9 Environmental Protection Agency webpage, a true and correct copy of which is attached  
10 to the Declaration of Michael S. Dorsi as Exhibit 13. Exhibit 13 is publicly available at  
11 <https://www.epa.gov/verified-diesel-tech/learn-about-idling-reduction-locomotives> and  
12 was downloaded from that URL on March 1, 2024.

13       7. Excerpts from California’s Fourth Climate Change Assessment, Statewide  
14 Summary Report, dated August 2018, true and correct copies of which are attached to  
15 the Declaration of Michael S. Dorsi as Exhibit 14. Exhibit 14 is publicly available at  
16 [https://www.energy.ca.gov/sites/default/files/2019-11/Statewide\\_Reports-SUM-CCCA4-2018-013\\_Statewide\\_Summary\\_Report ADA.pdf](https://www.energy.ca.gov/sites/default/files/2019-11/Statewide_Reports-SUM-CCCA4-2018-013_Statewide_Summary_Report ADA.pdf) and was downloaded from that URL  
17 on March 2, 2024.

19       8. The webpage “Truck vs. Train Emissions Analysis” from the California Air  
20 Resources Board website, dated September 23, 2020, a true and correct copy of which  
21 is attached to the Declaration of Michael S. Dorsi as Exhibit 15. Exhibit 15 was is publicly  
22 available at <https://ww2.arb.ca.gov/resources/fact-sheets/truck-vs-train-emissions-analysis> and was  
23 <https://ww2.arb.ca.gov/resources/fact-sheets/truck-vs-train-emissions-analysis> and was  
24 downloaded from that URL on March 3, 2024.

25       9. Excerpts from the California’s 2022 State Strategy for the State  
26 Implementation Plan, true and correct copies of which are attached to the Declaration of  
27 Michael S. Dorsi as Exhibit 16. The complete document is publicly available at  
28

1       [https://ww2.arb.ca.gov/sites/default/files/2022-08/2022\\_State\\_SIP\\_Strategy.pdf](https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf) and was  
2 downloaded from that URL on March 3, 2024.

3           10. Letter from California Air Resource Board to Regional Administrator for the  
4 United States Environmental Protection Agency, Region 9, submitting the South Coast  
5 Air Quality Management District's 2022 Air Quality Management Plan, a true and correct  
6 copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 17. Exhibit 17  
7 is publicly available at [https://ww2.arb.ca.gov/sites/default/files/2023-03/2022\\_SC\\_AMQP\\_SSS\\_Submittal\\_Letter\\_to\\_EPA.pdf](https://ww2.arb.ca.gov/sites/default/files/2023-03/2022_SC_AMQP_SSS_Submittal_Letter_to_EPA.pdf) and was downloaded from that  
8 URL on March 3, 2024.

9           11. California Air Resources Board Resolution 23-12, a true and correct copy of  
10 which is attached to the Declaration of Michael S. Dorsi as Exhibit 23. Exhibit 23 is  
11 publicly available at

12       <https://ww2.arb.ca.gov/sites/default/files/barcu/board/res/2023/res23-12.pdf> and was  
13 downloaded from that URL on March 4, 2024.

14           12. California Air Resources Board Executive Order R-23-004, Relating to the  
15 Proposed In-Use Locomotive Regulation, a true and correct copy of which is attached to  
16 the Declaration of Michael S. Dorsi as Exhibit 24. Exhibit 24 is publicly available at  
17 <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/eo.pdf> and was  
18 downloaded from that URL on March 4, 2024.

19           13. California Air Resources Board Second Notice of Public Availability of Modified  
20 Text and Availability of Additional Documents and Information, a true and correct copy of  
21 which is attached to the Declaration of Michael S. Dorsi as Exhibit 25. Exhibit 25 is  
22 publicly available at

23       <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/2nd15daynotice1.pdf> and was downloaded from that URL on March 4, 2024.

24           The facts established by Exhibits 1, 2, 3, 4, 9, 13, 14, 15, 16, 17, 23, 24, 25, and  
25 those documents themselves, are proper subjects of judicial notice. The documents are  
26 publicly available on government websites and the facts for which they are relied upon

here can be accurately and readily determined from these sources whose accuracy cannot reasonably be questioned. See *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (stating that it was appropriate to take judicial notice of information “made publicly available by government entities” on their websites where “neither party disputes the accuracy of the web sites or the accuracy of the information displayed herein”); *Martinez v. Mead Johnson & Co., LLC*, No. 22-CV-213, 2022 WL 15053334, at \*4 (C.D. Cal. Oct. 22, 2022) (finding that FDA guidance was judicially noticeable because it was “publicly available and it was disseminated by a government agency”); *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-CV-1166, 2009 WL 6597891, at \*2 (S.D. Cal. 2009) (“Information on government agency websites has often been treated as properly subject to judicial notice.”).

## II. FACTS TO BE JUDICIALLY NOTICED

14. The fact that Union Pacific Railroad Company advertises domestic intermodal service, as described on the webpage “Domestic Intermodal Service” from the Union Pacific website, a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 5. Exhibit 5 is publicly available at <https://www.up.com/customers/premium/IntermodalServices/domestic-intermodal/index.htm> and was downloaded from that URL on March 3, 2024.

15. The fact that Burlington Northern Santa Fe Railway offers services to move “high volumes of single commodities from a single origin to a single destination,” as shown on the webpage “Ways of Shipping” from the Burlington Northern Santa Fe website, a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 6. Exhibit 6 is publicly available at <https://www.bnsf.com/ship-with-bnsf/ways-of-shipping/index.page> and was downloaded from that URL on March 3, 2024.

16. The fact that Mendocino Railway offers “local and interchange” routes, as shown in the Mendocino Railway Freight Tariff CWR 9500, a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 7. Exhibit 7 was

1 downloaded from [https://www.skunktrain.com/wp-](https://www.skunktrain.com/wp-content/uploads/2022/02/MENDOCINO-2021-FREIGHT-TARIFF-FINAL.pdf)  
2 [content/uploads/2022/02/MENDOCINO-2021-FREIGHT-TARIFF-FINAL.pdf](https://www.skunktrain.com/wp-content/uploads/2022/02/MENDOCINO-2021-FREIGHT-TARIFF-FINAL.pdf) on March 3,  
3 2024.

4       17. The fact that Union Pacific Railway Company moves sand and gravel from  
5 extraction sites to processing plants on two routes entirely within California, as described  
6 in the article *Rock-by-Rail*, by Loretta Sorenson and Pit & Quarry Staff, published in Pit &  
7 Quarry on February 1, 2014, a true and correct copy of which is attached to the  
8 Declaration of Michael S. Dorsi as Exhibit 8. Exhibit 8 is publicly available at  
9 <https://www.pitandquarry.com/rock-by-rail/> and was downloaded from that URL on March  
10 2, 2024.

11       18. The fact that Burlington Northern Santa Fe Railway offers transloading  
12 services, as described in the article *The Ever-Changing Dynamics of Shortline*  
13 *Railroading*, by David Lustig, published by Trains Magazine on February 1, 2024, a true  
14 and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit  
15 10. Exhibit 10 is publicly available at [https://www.trains.com/trn/railroads/history/the-](https://www.trains.com/trn/railroads/history/the-ever-changing-dynamics-of-shortline-railroading/)  
16 [ever-changing-dynamics-of-shortline-railroading/](https://www.trains.com/trn/railroads/history/the-ever-changing-dynamics-of-shortline-railroading/) and was downloaded from that URL on  
17 February 7, 2024.

18       19. The fact that a company called DrayNow advertises an app by which trucking  
19 businesses can gain access to the California intermodal market, as described in the blog  
20 post *Tap Into the California Intermodal Drayage Markets: Los Angeles & Northern*  
21 *California*, on the website DrayNow.com, a true and correct copy of which is attached to  
22 the Declaration of Michael S. Dorsi as Exhibit 11. Exhibit 11 was downloaded from  
23 <https://draynow.com/tap-into-the-california-intermodal-drayage-markets/> on March 3,  
24 2024.

25       20. The fact that California has many highly-populated cities that suffer from  
26 extremely high levels of ozone and PM2.5 pollution, from excerpts of the American Lung  
27 Association's 2023 State of the Air Report, true and correct copies of which are attached  
28 to the Declaration of Michael S. Dorsi as Exhibit 18. The complete document is available

1 at <https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-2023.pdf> and was downloaded from that URL on March 2, 2024.

3       21. The fact that California has struggled for years to reduce its ozone pollution,  
4 as described in the article *This 1943 “Hellish Cloud” Was the Most Vivid Warning of LA’s*  
5 *Smog Problems to Come*, by Kat Eschner, published in Smithsonian Magazine’s Smart  
6 News on July 26, 2017, a true and correct copy of which is attached to the Declaration of  
7 Michael S. Dorsi as Exhibit 19. Exhibit 19 is publicly available at  
8 <https://www.smithsonianmag.com/smart-news/1943-hellish-cloud-was-most-vivid-warning-las-smog-problems-come-180964119/> and was downloaded from that URL on  
9 March 2, 2024.

10      22. The definition of “transloading” provided on the webpage “What is  
11 Transloading in Logistics?” from the Boa Logistics website, a true and correct copy of  
12 which is attached to the Declaration of Michael S. Dorsi as Exhibit 20. Exhibit 20 is  
13 publicly available at <https://www.boalogistics.com/drayage/what-is-transloading/> and was  
14 downloaded from that URL on March 3, 2024.

15      23. The fact that Burlington Northern Santa Fe Railway offers multiple intermodal  
16 hubs in California, as shown on the Burlington Northern Santa Fe Railway website, a  
17 true and correct copy of which is attached to the Declaration of Michael S. Dorsi as  
18 Exhibit 21. Exhibit 21 is publicly available at <https://www.bnsf.com/ship-with-bnsf/support-services/facility-listings.page> and was downloaded from that URL on March  
19 3, 2024.

20       Because they are contained in Exhibits 5, 6, 7, 8, 10, 11, 18, 19, 20, and 21, the  
21 facts listed above are “not subject to reasonable dispute” because they “can be  
22 accurately and readily determined from sources whose accuracy cannot reasonably be  
23 questioned.” Fed. R. Civ. P. 201(b).

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2 Dated: March 5, 2024

3 Respectfully submitted,

4 ROB BONTA  
5 Attorney General of California  
6 MYUNG J. PARK  
7 Supervising Deputy Attorney General  
8 NATALIE COLLINS  
9 MICHAEL S. DORSI  
10 KATHERINE GAUMOND  
11 MICAELA M. HARMS  
12 DYLAN K. JOHNSON  
13 Deputy Attorneys General

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10 /s. *M. Elaine Meckenstock*  
11 M. ELAINE MECKENSTOCK  
12 Deputy Attorney General  
13 Attorneys for Defendants